

Before the
Administrative Hearing Commission
State of Missouri



STATE COMMITTEE OF PSYCHOLOGISTS,)

Petitioner,)

vs.)

WALKER S. POSTON,)

Respondent.)

No. 10-2051 PS

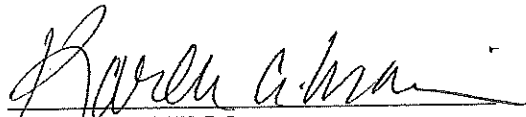
CONSENT ORDER

The licensing authority filed a complaint. Section 621.045¹ gives us jurisdiction.

On February 15, 2012, the parties filed a "Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, Waiver of Hearings, and Disciplinary Order." Our review of the document shows that the parties have stipulated to certain facts and waived their right to a hearing before us. Because the parties have agreed to these facts, we incorporate them into this order and adopt them as stipulated. *Buckner v. Buckner*, 912 S.W. 2d 65, 70 (Mo. App., W.D. 1995). We conclude that the licensee is subject to discipline under § 337.035.2(5), (6), (13) and (15), RSMo. We incorporate the parties' proposed findings of fact and conclusions of law into this Consent Order. We certify the record to the licensing agency under § 621.110.

The only issue before this Commission is whether the stipulated conduct constitutes cause to discipline the license. The appropriate disciplinary action is not within our power to decide; that is subject to the licensing authority's decision or the parties' agreement. Section 621.110.

SO ORDERED on February 16, 2012.


KAREN A. WINN
Commissioner

¹Statutory references are to RSMo Supp. 2011 unless otherwise noted.

FILED

FEB 15 2012

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ADMINISTRATIVE HEARING COMMISSIONADMINISTRATIVE HEARING
COMMISSIONSTATE COMMITTEE OF
PSYCHOLOGISTS

Petitioner,

v.

WALKER S. POSTON

Respondent.

No. 10-2051 PS

~~JOINT MOTION FOR CONSENT ORDER; JOINT STIPULATION OF~~
FACTS AND CONCLUSIONS OF LAW, WAIVER OF HEARINGS
BEFORE THE ADMINISTRATIVE HEARING COMMISSION
AND THE STATE COMMITTEE OF PSYCHOLOGISTS,
AND DISCIPLINARY ORDER

Respondent Walker S. Poston ("Licensee") and Petitioner State Committee of Psychologists ("Committee") enter into this Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, Waiver of Hearings Before the Administrative Hearing Commission and the State Committee of Psychologists, and Disciplinary Order ("Joint Stipulation") for the purpose of resolving the Complaint filed against Licensee in the above-styled case.

Pursuant to the rules governing practice and procedure before the Administrative Hearing Commission ("AHC"), 1 CSR 15-3.446, and pursuant to the terms of § 536.060, RSMo,¹ as applied to the AHC by § 621.135, RSMo, Licensee and the Committee hereby waive the right to a hearing before the AHC

¹ All statutory references are to the Revised Statutes of Missouri (2011) as supplemented unless otherwise indicated.

POS012010010-2051923.1

and the right to a disciplinary hearing before the Committee pursuant to § 621.110, RSMo and jointly stipulate to the facts and consent to the imposition of disciplinary action against Licensee (License Number 2005013537), for violations of statutes and lawful rules and regulations set forth below.

Licensee acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to

~~have all charges proven upon the record by competent and substantial evidence;~~
the right to cross-examine any witnesses appearing against him at the hearing; the right to present evidence on his behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against him; the right to a ruling on questions of law by the AHC; the right to a disciplinary hearing before the Committee at which time Licensee may present evidence in mitigation of discipline; the right to a claim for attorney's fees and expenses; and the right to obtain judicial review of the decisions of the AHC and the Committee.

Being aware of these rights provided Licensee by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Joint Stipulation and agrees to abide by the terms of this document.

Licensee acknowledges that he has received and reviewed a copy of the formal complaint filed with the AHC on October 28, 2010. Licensee stipulates

that the factual allegations contained in this Joint Stipulation are true and stipulates with the Committee that Licensee (License Number 2005013537) is subject to the agreed disciplinary action by the Committee as set out in this Joint Stipulation in accordance with the provisions of Chapters 337 and 621, RSMo.

The parties hereto stipulate and agree that this document embodies the entire Joint Stipulation and understanding of the parties with respect to the subject matter contained herein. The parties hereby declare and represent that no promise,

~~inducement, or agreement not herein expressed has been made.~~

Based upon the foregoing, the Committee and Licensee jointly stipulate to the following and request that the AHC adopt the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law as the AHC's Findings of Fact and Conclusions of Law.

JOINT PROPOSED FINDINGS OF FACT

1. The Committee is an agency of the State of Missouri created and established pursuant to § 337.050, RSMo, for the purpose of carrying out the provisions of §§ 337.010 to 337.090, RSMo, relating to psychologists.

2. Licensee was licensed by the Committee as a psychologist, License Number 2005013537. His license was issued on May 11, 2005, and was active until it lapsed on January 31, 2008.

3. At all times relevant herein, Licensee was employed as an Associate Professor and engaged in research for the Department of Psychology ("Department") at the University of Missouri Kansas City ("UMKC"). Licensee's

duties included operating the Department's Health Research Group Lab ("Lab") and supervising students and employees.

4. Licensee knowingly allowed students and employees under his supervision in the Lab to make comments and gestures that were intimidating and harassing to other students and employees in the Lab.

5. Licensee intentionally failed to maintain a proper professional boundary between himself and the students and employees he supervised in the Lab so as to result in the loss of professional trust and confidence owed to such students and employees.

6. Licensee intentionally failed to sufficiently supervise the students and employees in the Lab so as to cause or contribute to cause a culture that encouraged unprofessional conduct within the Lab thus exploiting and threatening the welfare of such students and employees.

JOINT PROPOSED CONCLUSIONS OF LAW

7. Jurisdiction and venue are proper before the AHC pursuant to §§ 337.035, and 621.045, RSMo.

8. § 337.035.2, RSMo, sets forth the grounds for discipline and states in part:

The committee may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

....

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

....

(13) Violation of any professional trust or confidence;

.....

....

(15) Being guilty of unethical conduct as defined in "Ethical Rules of Conduct" as adopted by the committee and filed with the secretary of state,

9. 20 CSR 2235-5.030(8)(A) sets forth the "Ethical Rules of Conduct" and states in part that "psychologist[s] shall not harass or exploit a supervisee or student in any way - sexually, financially or otherwise. The psychologist as a teacher shall recognize that the primary obligation is to help others acquire knowledge and skill."

10. Licensee's conduct stipulated to above violates the foregoing standards of the Ethical Rules of Conduct.

11. During all times that Licensee was licensed as a psychologist, he had a relationship of professional trust and confidence with his students, employees, supervisees, and employer who relied upon him to provide services in compliance with the statutes, regulations, and standard of care governing that profession.

Licensee's conduct stipulated to above violated that professional trust and confidence.

12. Licensee's conduct stipulated to above constitutes misconduct in the performance of his duties as a licensed psychologist.

13. Consequently, cause exists to discipline Licensee (License Number 2005013537) under § 337.035.2(5), (6), (13) and (15), RSMo, for the conduct stipulated to herein.

JOINT AGREED DISCIPLINARY ORDER

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the Disciplinary Order entered by the Committee in this matter under the authority of § 621.110, RSMo:

I. DISCIPLINE IMPOSED

By agreement of the parties, Licensee (License Number 2005013537) is hereby CENSURED.

II. WAIVER AND RELEASE

A. Licensee hereby waives and releases the State Committee of Psychologists, its members and any of its employees, agents, or attorneys, including any former Committee members, employees, agents and attorneys, of, or from, any liability, claim, actions, causes of action, fees costs and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under

Title 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this Joint Stipulation. The parties acknowledge that this Paragraph is severable from the remaining portions of this Joint Stipulation in that it survives in perpetuity even in the event that any court of law deems this Joint Stipulation or any portion thereof void or unenforceable.

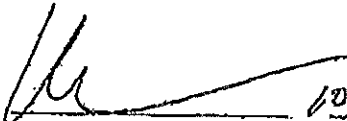
~~B. The parties to this Joint Stipulation understand that the State~~
Committee of Psychologists will maintain this Joint Stipulation as an open record of the Committee as provided in Chapters 324, 337, and 610, RSMo.


C. This Disciplinary Order will become effective immediately upon the issuance of the Consent Order of the AHC in this matter, without further action by either party.

In consideration of the foregoing, the parties consent to the entry of record and approval of this Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, Waiver of Hearings Before the Administrative Hearing Commission and State Committee of Psychologists, and Disciplinary Order and to the termination of any further proceedings before the Administrative Hearing Commission based upon the Complaint filed by Petitioner in the above-styled action.

RESPONDENT
WALKER S. POSTON

PETITIONER
STATE COMMITTEE
OF PSYCHOLOGISTS

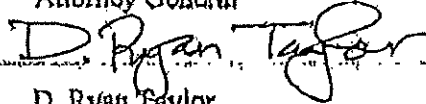

Walker S. Poston
10 Feb 2012
Date

By: 
Pamela Groose
Executive Director
State Committee of Psychologists
2-15-12
Date

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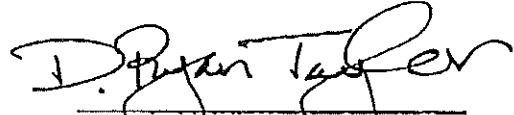
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, Waiver of Hearings Before the Administrative Hearing Commission and the State Committee of Psychologists, and Disciplinary Order was sent by facsimile this 15th day of February 2012 to:

Sandy Smith, Attorney for Respondent
Fax: (816) 374-0509


Assistant Attorney General